

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MACKING NETTLES, JR.,

Plaintiff,

v.

ANDREA EDGAR, NP, et al.,

Defendants.

CASE No. 1:22-CV-119

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Berens' Report and Recommendation (ECF No. 62) and Plaintiff's Objection to the Report and Recommendation (ECF No. 67). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections.

After its review, the Court finds the Magistrate Judge's Report and Recommendation is factually sound and legally granted.

The Magistrate Judge recommends granting Defendant Edgar's motion for summary judgment (ECF No. 27) and denying Defendant Babbitt's motion for summary judgment (ECF No. 24), both of which seek summary judgment solely on the basis of exhaustion. In his objections, Plaintiff primarily reiterates and expands upon arguments presented in his original response brief. His objections fail to deal in a meaningful way with the Magistrate Judge's analysis and the rules regarding exhaustion of administrative grievances. The Magistrate Judge carefully and thoroughly considered the record, the parties' arguments, and the governing law. The Magistrate Judge properly analyzed Plaintiff's claims. Nothing in Plaintiff's Objections changes the fundamental analysis. Defendant Edgar's objection to the Magistrate Judge's Order that granted Plaintiff's motion to strike Defendant Edgar's reply brief therefore is moot.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 62) is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that:

1. Defendant Babbitt's Motion for Summary Judgment on the Basis of Exhaustion (ECF No. 24) is **DENIED**;
2. Defendant Edgar's Motion for Summary Judgment Based on Failure to Exhaust Administrative Remedies (ECF No. 27) is **GRANTED**; and

3. Defendant Edgar's Objection to the Magistrate Judge's Order (ECF No. 61)
is **DISMISSED AS MOOT.**

Dated: October 31, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE